IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

OP.No. 27404 of 2001(K)

PETITIONER:

S.SINDHU, MUSIC TEACHER, VICTORY GIRLS HIGH SCHOOL, NEMOM, THIRUVANANTHAPURAM.

BY ADV. SRI.PIRAPPANCODE V.SREEDHARAN NAIR
PPI.S.P.ARAVINDAKSHAN PILLAY
SRI.PIRAPPANCODE V.S.SUDHIR
SRI.V.VARGHESE

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DIRECTOR OF PUBLIC INSTRUCTION, DIRECTORATE OF PUBLIC INSTRUCTION, JAGATHY, THIRUVANANTHAPURAM 14.**

3. **THE DEPUTY DIRECTOR (EDUCATION), KILLIPPALAM, THIRUVANANTHAPURAM 36.**

4. **THE DISTRICT EDUCATIONAL OFFICER, NEYYATTINKARA, THIRUVANANTHAPURAM DT.**

5. **THE MANAGER, VICTORY BOYS' HIGH SCHOOL, NEMOM, THIRUVANANTHAPURAM.**

BY ADV. SRI.P.GOPAKUMARAN NAIR FOR R5
SRI.C.S.DIAS
GOVERNMENT PLEADER SRI.SANDESH RAJA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/02/2007, THE COURT ON 21/03/2007 DELIVERED THE FOLLOWING:

OP NO.27404/2001

ORDER IN C.M.P.NO. 44504 OF 2001 IN OP NO.27404 OF 2001

DISMISSED

21/3/2007 **SD/-**
ANTONY DOMINIC, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE ORDER OF APPOINTMENT NO.95/92 DATED 31.7.1992 OF THE 5TH RESPONDENT.

EXT.P2: TRUE COPY OF THE ORDER NO.D.DIS.6639/92/B4 DATED 15.9.1992 OF THE 4TH RESPONDENT.

EXT.P3: TRUE COPY OF THE ORDER NO.D.DIS.8480/93/B4 DATED 13.8.1993 OF THE 4TH RESPONDENT.

EXT.P4: TRUE COPY OF THE ORDER NO.D.DIS.B5-37475/93 DATED 24.2.1994 OF THE 3RD RESPONDENT.

EXT.P5: TRUE COPY OF THE APPEAL DATED 26.12.1994 SUBMITTED BY THE 5TH RESPONDENT BEFORE THE 2ND RESPONDENT.

EXT.P6: TRUE COPY OF THE ORDER NO.D.DIS.RA(1)8971/95 DATED 21.2.1995 OF THE JOINT DIRECTOR OF PUBLIC INSTRUCTION.

EXT.P7: TRUE COPY OF THE G.O(RT) NO.2576/95/GE DATED 25.7.1995.

EXT.P8: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN O.P.NO.5451/92, DATED 29.3.1996.

EXT.P9: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE HON'BLE MINISTER FOR EDUCATION, DATED 6.11.1997.

EXT.P10: TRUE COPY OF THE REPRESENTATION DATED 22.3.1999 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P11: TRUE COPY OF THE G.O(RT) NO.312/99/G.EDN. DATED 21.1.1999.

EXT.P12: TRUE COPY OF THE REPRESENTATION DATED 17.11.1998 SUBMITTED BY THE PETITIONER BEFORE THE HON'BLE MINISTER OF EDUCATION.

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EXT.P13: TRUE COPY OF THE GOVERNMENT ORDER NO.59058/K3/98/G.EDN DATED 28.3.2000.

EXT.P14: TRUE COPY OF THE REVIEW PETITION DATED 12.8.2000 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P15: TRUE COPY OF THE G.O(RT) NO.2658/2001/G.EDN. DATED 10.7.2001.

EXT.P16: TRUE COPY OF THE JUDGMENT DATED 30.7.1991 IN O.P.NO.3041/91 OF THIS HON'BLE COURT.

EXT.P17: TRUE COPY OF THE G.O.(RT) NO.1367/96/G.EDN. DATED 11.4.96.

EXT.P18: TRUE COPY OF THE ORDER OF APPOINTMENT NO.B4-5817/2000/D.DIS. DATED 17.7.2000 OF THE 5TH RESPONDENT.

//TRUE COPY//

ANTONY DOMINIC, J.
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O.P NO. 27404 OF 2001
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Dated this the 21st day of March, 2007

J U D G M E N T

1. A Music Teacher in the Victor Boys High School, Nemom, Thiruvananthapuram has filed this original petition seeking to quash Exts.P3, P4, P6, P7, P14 and P15. She is also seeking a direction requiring the respondents to sanction one post of Music Teacher in the School, from 1993-94 onwards and to appoint her in that post, duly approving the same.

2. Briefly stated, the facts of the case are that by Ext.P1 order dated 31.07.1992, petitioner was appointed by the 5th respondent Manager to the post of Music Teacher in the School. Thereafter, by Ext.P2, the 4th respondent sanctioned an additional post of Music Teacher in terms of Rule 6(4) of Chapter XXIII KER, taking into account the division strength and the required periods. It is evident from Ext.P2 that during 1991-92 and 1992-93 the number of divisions in Classes VIII & IX were 5 and 6 respectively. According to the petitioner although the position continued as such even during 1993-94, by Ext.P3 staff fixation order, the 3rd respondent abolished one post of Music Teacher “for want of periods”. The Manager filed appeal to the Deputy Director and the same was rejected

by Ext.P4, with the endorsement "rejected for want of periods". It is stated during 1994-95 in the staff fixation order issued by the 4th respondent though there was increase of one more division with corresponding increase in the periods for music, additional post of Music Teacher was not sanctioned. This compelled the Manager to file an appeal to the 2nd respondent, which also met with rejection as per Ext.P6 issued by the Joint Director, Directorate of Public Instruction. Again the matter was pursued with the 2nd respondent, only to be rejected by Ext.P7.

3. The petitioner being the affected teacher was also pursuing the matter and Exts.P9, P10 and P12 are the representations that were made by her to the Government on different occasions. Finally, the representation having been rejected by Ext.P13, she filed Exts.P14 seeking review thereof, which was also rejected by Ext.P15. While so, by Ext.P18, the petitioner was appointed by the 5th respondent as Music Teacher in the converted vacancy of Drawing Teacher, w.e.f. 17.07.2000 and her appointment has been approved by the educational authorities. In the aforesaid circumstances, it is asserting her right to be appointed in the school from 1993-94 that this original petition has been filed seeking the reliefs mentioned above.

4. Counter affidavit has been filed by the 1st respondent contending inter alia that during 1993-94 there were 5 divisions in Standard VIII and 6 in standard IX and that the number of period available for Arts group was 8 (5 +3) for which any one post under Arts Group was admissible. It is stated that the Drawing Teacher who was continuing in the school was senior to the petitioner and hence the post of Drawing Teacher was allowed to continue. It is further stated that in 1994-95 there existed 6 class divisions each in standards VIII & IX and the period available in Arts group was 9, which did not warrant sanction of a 2nd post under the Arts group. The 1st respondent would further state that there is no provision in the rule to divert the periods under Sewing/ Craft to sanction post under the Arts group. It is contended that according to the Rules, the 2nd post in the Arts group, here the Music Teacher's post, can only be sanctioned when the periods under this group become 10 or more. According to the 1st respondent since there are only 9 periods there was no scope for sanctioning an additional post of Music Teacher during 1994-95. It is also stated that during 2000-01 due to the retirement of a Drawing Teacher, the specialist teachers post was vacant in the School and based on the proposal submitted by the 5th respondent Manager, petitioner's appointment was

approved from 17.07.2000 onwards abolishing the Drawing Teacher's post. Lastly it is pointed out once again that it was on account of insufficiency of periods that the post of Music Teacher in the school was not sanctioned with effect from 1993-94.

5. The petitioner has filed a reply affidavit disputing the averments in the counter affidavit of the 1st respondent. It is stated that there was absolutely no justification for adopting the stand that the number of periods available was only 8 when it should be 11 (5+6). On this basis it is stated that irrespective of the continuance of the Drawing Teacher, the post of Music Teacher ought to have been sanctioned by the 4th respondent. It is also stated that there is no basis for contending that there was only 9 periods at the time when there existed, 6 divisions each in standards VIII and IX. According to the petitioner, 12 periods should be available. She is attempting to compare herself with the case dealt with in Ext.P16 judgment where this Court had found fault with the department for not explaining how two periods were not available. Reply affidavit concludes by reiterating that sufficient periods were available to sanction the post of Music Teacher during 1993-94.

6. Heard the counsel for the petitioner and the Learned

Government Pleader.

7. The statutory provision which governs sanctioning of additional posts of specialist teachers like Music Teacher is Rule 6(4), Chapter XXIII, KER. Rule 6(4) provides that notwithstanding anything contained in Rule 7 the High School section shall have one fulltime post of Music Teacher, irrespective of the number of periods of work per week for Music. The 2nd proviso to Rule 6(4) is to the effect that no full time post of specialist teacher under any category shall be sanctioned if the number of periods of work per week in the concerned subject is less than 5. Therefore, unless the petitioner is able to prove that in the situation that was prevailing in the school, the number of periods per week in Music was not less than 5, then and then alone, can she succeed in this original petition.

8. Unlike in the case dealt with by this Court in Ext.P16 judgment, the syllabus of the concerned year is not placed on record. The only material that is available before me to draw some inference about the number of periods for Music, are the orders produced in the original petition which are impugned by the petitioner. Ext.P2 shows that the post against which the petitioner was working is the additional post sanctioned by the said

order. Ext.P3 shows that the post was abolished for want of periods. Appeal against Ext.P3 also was rejected and the reason assigned is want of periods.

9. Until now while details thereof are not available, Ext.P6, Ext.P7 and P15 threw more light into this factual controversy. Reference to Ext.P6 shows that according to the Joint Director, Directorate of Public Instruction, the number of periods available for Arts/ Music during 1994-95 was only 9. This order also discloses that the number of periods was insufficient to sanction the post of Music Teacher in addition to the post of Drawing Teacher, the incumbent of which, is admittedly senior to the petitioner. In Ext.P7, the government took the view that there were only 9 periods available for Arts/ Music (although it is wrongly typed as 6+3½ and counsel for the petitioner has fairly confessed the mistake). This position is seen to have been reiterated by the Government in Exts.P13 and P15 as well.

10. In terms of the provisions contained in Rule 6(4), no full time post of specialist teacher under any category shall be sanctioned if the number of period of work per week in the concerned subject is less than 5. A combined reading of Exts.P6 and P7 disclose that the total number of periods in Arts/ Music was 9 and that Arts itself had 6

periods. If total is taken as 9, the rounding off method followed in Ext.P8 judgment, is irrelevant in the facts of this case. Resultant position is that the available number of periods for Music are only 3 per week. This will not satisfy the minimum requirement of 5 specified in Rule 6 (4) and thus it does not advance the case of the petitioner in any manner. To wriggle out of this situation, counsel for the petitioner made an attempt saying that periods is excess of 5 in the Arts Group, could be added to Music and if it is so done, the minimum requirement of 5 periods could be satisfied. As rightly pointed out by the Learned Government Pleader, the minimum specified is Rule 6(4) has to be in each subject and the shortfall cannot be made up by addition of the excess in other subjects and no rule or Government order is pointed out supporting this contention.

11. Although, in the reply affidavit petitioner has reiterated her contention that the number of periods should have been 11, petitioner does not disclose the basis of this quantification nor has she produced any material in support thereof. Similar is the situation when she contends that, as against the total number of 9 periods mentioned by the respondent for 1994-95, it ought to have been 12. As in the earlier case here also one is left to wonder on what basis such tall claims are made. In the

absence of any materials supporting the petitioner's contention I have to accept the version of the 1st respondent.

12. Petitioner relies on Ext.P16 judgment and contends that in that case, there was no explanation why 2 periods were not available for Drawing in standard IX when there were 2 divisions. According to the petitioner here also such explanation is lacking. On a careful reading of the judgment, I notice that the relevant syllabus for standard IX published by the Government of Kerala was placed on record in that case and this court had material to enter a finding on the number of periods that ought to have been there, unlike this case, where such materials are totally lacking. In my view, Ext.P16 judgment cannot be of any assistance to the petitioner.

In the circumstances, I see no reason to interfere with the impugned orders and the writ petition is devoid of merit and is only to be dismissed and I do so.

ANTONY DOMINIC, JUDGE.

Rp